HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 52 of 2004

Prabhakar Sarswat ..... Revisionist

Versus

Nagar Palika Parishad, Kashipur
& others ..... Respondents.

Dated: 24.8.2009

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present revision has been filed against the order dated 22.7.2004 passed by the Additional Civil Judge, Junior Division, Kashipur in Civil Suit No. 57 of 2002.

Briefly stated after the death of plaintiff Hari Nandan Prasad on 29.3.2001, the revisionist has become Karta and an application was moved by the revisionist for substitution on 29.4.2004. Both the sons of the plaintiff have filed their affidavit on 24.6.2004 to the effect that the revisionist has become Karta of the family. The trial Court has rejected the application on the ground that Karta cannot be substituted in place of deceased plaintiff as he has not filed the suit in the capacity of Karta. The trial Court has held that the heirs of the

plaintiff can move the application for substitution in place of the plaintiff.

Thus in order to safeguard the interest of the estate substitution application has to be filed and if there was any dispute the same can amicable be settled under Order 22 Rule 5 C.P.C.

In view of the above provision of law liberty is given to the revisionist to file proper application as has been directed by the trial Court and if such an application is filed, the same shall be considered on merits.

Subject to the aforesaid observation, the revision is disposed of. No order as to costs.

(Rajesh Tandon J.)

24.8.2004
*Dhyani